

Attorney Docket No.:	J3711(C)
Serial No.:	10/775,510
Filed:	February 10, 2004
Confirmation No.:	1049

### **REQUEST FOR RECONSIDERATION FOLLOWING FINAL REJECTION**

The referenced Office Action has maintained the rejection of claims 1, 6-8, 12, 16, 18-20 and 22-24 under 35 U.S.C. 103(a) over McGlone et al. (U.S. Patent No. 6,503,492) in view of Chuah et al. (citing US 2004/0213748 and what is referenced as equivalent WO 03/0055977), as well as the rejection of claim 4 over McGlone et al. in view of Chuah et al. combined and in view of Nye et al. (WO 00/27348). These rejections are respectfully traversed and, in view of the remarks set forth below, reconsideration of the subject claims is respectfully requested. This Request for Reconsideration accompanies the filing of a Notice of Appeal in the referenced application.

The Action acknowledges that McGlone et al. does not teach a siloxane substituted with diphenylethyl groups as in the instantly claimed composition. It is acknowledged that matching of the refractive index (RI) of an AP salt and a carrier fluid is known to be desirable as regards the formation of a more translucent composition and, further, that better RI matching can occur by bringing down the RI of the normally higher RI antiperspirant active and bringing up the RI of the normally lower RI carrier. Paragraph 109 at page 7 of Chuah et al. is referenced as disclosing that the "refractive index of the carrier fluid is increased by increasing the proportion of aromatic esters relative to aliphatic alcohol", with the paragraph going on to note: "It can also be increased by employing a fraction of high refractive index silicone oils, such as the non-volatile arylalkylsilicone oils mention previously herein." While the silicones disclosed by Chuah et al. are said to include dimethicones or linear silicone oils which contain a high proportion of phenyl substituents (the citation references DC200 and DC704), **there is no disclosure of silicones having a high percentage of diphenylethyl groups as in the instant claims.** Moreover, paragraph 0035 of Chauh et al. expressly states that "... it is preferable for the

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**proportion of silicone oils in the carrier fluid mixture to be not more than 10%, particularly no more than 5% and most desirably be absent.”**

The Action further references U.S. Patent Application Publication No. 2003/0162929 as increasing the phenyl content of a silicone copolymer:

Verbruggen et al. point out that it is generally known in the art silicone materials with higher refractive index can be obtained by increasing the phenyl content of silicone (co)polymer, but the disadvantage of this technique is it reduces flexibility of such modified silicone polymers and increases the glass transition temperature (T<sub>g</sub>) of the polymers, making it more hard and brittle and less flexible over a wide temperature range...Verbruggen et al. also teach that one of the solutions known in the art to overcome such hurdle, in terms of reducing the glass transition temperature (T<sub>g</sub>) and increases the flexibility of the phenyl-modified silicone materials, is to link the phenyl-groups (or named as refractive index modifying groups) to the silicone backbone via alkanediyl-bridges...). See the Action at the bottom of page 16, top of page 17.

The silicones of Verbruggen et al. are flexible materials with a high refractive index that are disclosed as suitable for use in contact lenses. They are not materials that can be processed at the temperatures employed in the production of the subject compositions. Indeed, there is nothing in any of the above publications **that can be said to reasonably disclose antiperspirant compositions containing the subject diphenylethyl-substituted siloxanes**. Moreover, reading Verbruggen et al. one skilled in the art might reasonably conclude that silicones with a very high degree of diphenyl substitution might give rise to processing difficulties in antiperspirant applications. There is certainly no hint from any of the above publications that a formula I aryl substituted siloxane as described by the subject claims could be employed to **reduce** the pour temperature of structured anhydrous composition, in particular, an anhydrous composition in the form of a stick. Further, Chauh et al. expressly teaches away from carrier fluids **that contain in excess of**

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**10% of a silicone carrier fluid**, whereas the instant claims require that at least 30% by weight of the carrier fluid or mixture of fluids is the aryl substituted siloxane.

Nye et al. is directed to personal care compositions that include a particular aralkylsiloxane. In Nye et al. the term "aryl" is said to mean "a monovalent unsaturated hydrocarbon ring system containing one or more aromatic rings per group, which may optionally be substituted on the one or more aromatic rings, preferably with one or more groups selected from amino, nitro (C<sub>1</sub>-C<sub>6</sub>)alkyl, an which, in the case of two or more rings, may be fused rings, including, for example, phenyl, 2,4,6-trimethylphenyl, 2-isopropylmethylphenyl, 1-pentalenyl, naphthyl, anthryl, preferably phenyl." The term "aralkyl" is said to mean "an aryl derivative of an alkyl group, preferably a (C<sub>2</sub>-C<sub>6</sub>)alkyl group, wherein the portion of the aryl derivative may, optionally, be interrupted by an oxygen atom, such as, for example, phenylethyle, phenylpropyl, 2-(1-naphthyl)ethyl, preferably phenylpropyl, phenoxypropyl, biphenyloxypropyl." See page 4, lines 9 to 20. There is nothing in Nye et al. that teaches the highly substituted diphenyl siloxanes of the subject claims, and the citation does nothing to cure the deficiencies of McGlone et al. and Chauh et al.

Respectfully, the Action fails to establish a prima facie case of obviousness against the subject claims.

In the context of non-statutory obviousness type double patenting, such a rejection is deemed appropriate in cases where the conflicting claims though not identical **are not patentably distinct**. Applicants repeat the arguments set forth in their prior response with respect to the obviousness- type double patenting rejection over later filed co-pending 11/316,596. The claims of the '596 patent describe compositions that include a segregation inhibitor that is an alkylene-arylene block copolymer and a fibre-forming amide gellant selected from the group consisting of acyl aminoacid amides, cyclic dipeptides, 1,2-bisamidocyclohexanes, 1,3-bisamidocyclohexanes, amide derivatives of 1,2-dicarboxylic acids, amide

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derivatives of 1,3-dicarboxylic acids, and amide derivatives of 1,2,3-tricarboxylic acids, in a weight ratio of segregation inhibitor to fibre-forming amide gellant of from 1:1 to 3:1. The combination of a particular segregation inhibitor and a particular fiber-forming gellant in a particular ratio in compositions as described by the '596 claims provides certain unexpected improvements with respect to sedimentation of the AP active that patentably distinguishes over the subject claims. **The fact that the subject claims do not exclude a segregation inhibitor does not in and of itself render the claims obvious variants of one another.** The Action does not provide any basis that reasonably establishes how the instant claims render obvious or otherwise patentably conflict with those of the '596 application. Accordingly, such rejection is respectfully traversed and reconsideration thereof respectfully requested.

In view of the foregoing, reconsideration and allowance of the subject claims is respectfully requested. If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

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